

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4116 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
- . Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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AMBICA JANTA CINEMA

Versus

STATE OF GUJARAT

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Appearance:

MR SR SHAH for Petitioner

SERVED BY DS for Respondent No. 1, 2

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CORAM : MR.JUSTICE R.BALIA.

Date of decision: 08/07/96

ORAL JUDGEMENT

Rule. Notice of Rule is waived by the learned AGP. The petitioner comes before this court with short issue in this petition for challenging the demand notice of payment of Rs.79,534/- issued by respondent no.2 as Entertainment Tax. The petitioner is running 'JANTA CINEMA'. According to the petitioner, under the provisions of the Act, the petitioner is required to pay consolidated tax which he has paid. Demand in dispute has been raised on the basis of certain audit objection, without following due procedure of law, without even issue of notice to the petitioner to show cause against the proposed demand on the basis of such audit

objections.

The petitioner challenges the said notice of demand firstly on the ground that the demand notice has been issued, without affording an opportunity of hearing to the petitioner and is in breach of principles of natural justice, without following due procedure of law for raising such demand. He has also challenged the demand notice on merits.

It is not disputed before me that the demand has been raised on the basis of audit objection, without affording an opportunity of hearing to the petitioner. This ground alone is sufficient to vitiate the demand notice in question without entering into merits of the matter. On this ground alone, it can be said that the demand of tax in question is without affording an opportunity of hearing to the person from whom such demand is proposed to recover is not authorised by law and unsustainable. Accordingly this petition succeeds and the demand notice dt. 4/8/1995 is quashed. Rule is made absolute accordingly.

However the respondent is free to initiate the proceedings as are available to them under the provisions of the Act and relevant rules. If any such proceedings are initiated, the petitioner shall be at liberty to raise all objections which are available against raising of the demand against him. There will be no order as to costs.

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